



July 21, 2000

Mr. Dan Davison  
Fulbright & Jaworski L L P.  
2200 Ross Avenue, Suite 2800  
Dallas, Texas 75201-2784

OR2000-2752

Dear Mr. Davison:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137817.

The City of Plano (the “city”), which you represent, received a request for “an evaluation of the Plano City Attorney and/ or an evaluation of the Plano City Attorney’s Office, which I understand was completed at the end of March.” You have identified as responsive and submitted to this office a report resulting from an investigation of the City Attorney prompted by an anonymous complaint. The city hired an independent attorney to conduct the investigation, but the City Council “did not formally accept” the report “for a number of reasons.” You claim that the requested information is excepted from disclosure under sections 552.102, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that the requested information is specifically made public by section 552.022(a)(1), which provides:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

The requested information is “a completed report . . . made [for] a governmental body.” Consequently, the information is public, unless it is confidential under other law. “Other

law,” we believe, means the constitutional right to privacy, confidentiality statutes, and judicial decisions recognizing the common law right to privacy and the right to protect trade secrets from public disclosure. Thus, two of your raised exceptions, sections 552.107 and 552.111, are not other law that makes the information confidential. The city may not withhold the information under either section 552.107 or 552.111.

However, your other raised exception, section 552.102 of the Government Code, may make information otherwise released as public under section 552.022 confidential. Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). That test requires a finding that (1) the information is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in disclosure of the information. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). We find that the information submitted to this office does not contain any intimate and embarrassing information. Therefore, none of the submitted information may be withheld under section 552.102. The city must release the report.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

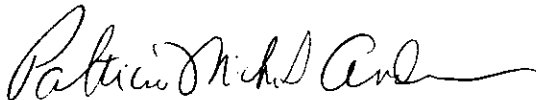
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/pr

Ref: ID# 137817

Encl. Submitted documents

cc: Mr. Oscar Uribe  
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